

## DEPARTMENT OF STATE REVENUE

04-20070591P.LOF

**Letter of Findings Number: 07-0591P  
Sales and Use Tax  
For the Tax Year 2007**

**NOTICE:** Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

**I. Tax Administration – Penalty.**

**Authority:** IC § 6-8.1-5-1; IC § 6-8.1-8-1.

The Taxpayer protests the imposition of the one hundred percent insufficient funds penalty.

**STATEMENT OF FACTS**

The Taxpayer operates as a restaurant. The Taxpayer did not have adequate funds in its account to cover the sales tax liability electronic transfer on September 20, 2007, for the tax period August 2007. The Indiana Department of Revenue (Department) sent a late notice including a ten percent negligence penalty on October 5, 2007, to the Taxpayer at the Taxpayer's address of record. The Taxpayer did not respond to the notice. On October 29, 2007, the Department issued a Demand Notice for the base tax due of \$8,858.96 and a one hundred percent penalty. The Taxpayer requested that the penalty be amended to a ten percent penalty. This Letter of Findings is based on the information in the file.

**I. Tax Administration – Penalty.**

**DISCUSSION**

All tax assessments are presumed to be valid. IC § 6-8.1-5-1(c). The Taxpayer bears the burden of proving that any assessment is incorrect. *Id.*

The Department assessed penalty pursuant to the provisions of IC § 6-8.1-10-5 as follows:

(a) If a person makes a tax payment with a check and the department is unable to obtain payment on the check for its full face amount when the check is presented for payment through normal banking channels, a penalty of ten percent (10 [percent]) of the unpaid tax or the face value of the check, whichever is smaller, is imposed.

(b) When a penalty is imposed under subsection (a), the department shall notify the person by mail that the check was not honored and that the person has ten (10) days after the date the notice is mailed to pay the tax and the penalty either in cash, by certified check, or other guaranteed payment. If the person fails to make the payment within the ten (10) day period, the penalty is increased to one hundred percent (100 [percent]) multiplied by the face value of the check or the unpaid tax, whichever is smaller.

(c) If the person subject to the penalty under this section can show that there is reasonable cause for the check not being honored, the department may waive the penalty imposed under this section.

Pursuant to IC § 6-8.1-8-1, a payment to the Department by electronic funds transfer is treated like a payment by check.

The Taxpayer argued that it had reasonable cause for its failure to pay the outstanding liability within ten days after the failure to have adequate funds in the account to satisfy the original liability. The Taxpayer argued that it assumed that the payment would be automatically resubmitted. When the Taxpayer realized that the payment was not automatically reset and submitted, it assumed that the Department would deliver a notice of tax due and penalty.

On October 5, 2007, the Department did send a notice of tax due and penalty to the Taxpayer's address of record, the business owner's home address. The owner of the business did not forward the notice to the business' accounting division. The Department fulfilled its duty by sending the notice, as required by statute, to the Taxpayer's address of record.

The Taxpayer misconstrues the statute. There is no provision for waiver of the penalty or amending it to a different amount for reasonable cause in not paying the outstanding liability within ten days after not having adequate funds in the account to cover the electronic transfer. The statute allows waiver of all or part of the penalty if the Taxpayer can show reasonable cause for failure to have adequate funds available at the time of the electronic transfer. The Taxpayer failed to sustain its burden of proving that it had reasonable cause for failing to have adequate funds in the account to electronically satisfy its tax liability. Therefore, the Department will not abate all or part of the 100 percent penalty.

**FINDING**

The Taxpayer's request to abate the penalty is respectfully denied.

*Posted: 04/30/2008 by Legislative Services Agency*

